

**Letter Report: The Internal Revenue Service
Has Not Implemented a Process to Monitor
Compliance With Direct Contact Provisions**

July 2001

Reference Number: 2001-10-116

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

July 23, 2001

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/ SELF-EMPLOYED
DIVISION

A handwritten signature in cursive script, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Letter Report - The Internal Revenue Service Has Not
Implemented a Process to Monitor Compliance With Direct
Contact Provisions

This report presents the results of our review to determine whether Internal Revenue Service (IRS) employees followed proper procedures to stop an interview if the taxpayer requested to consult with his/her representative, whether employees followed proper procedures when bypassing the representative and contacting the taxpayer directly, and whether IRS management has completed implementing corrective actions in response to recommendations from our Fiscal Year (FY) 1999 audit.

In summary, the Treasury Inspector General for Tax Administration (TIGTA) could not determine whether IRS employees complied with procedures when directly contacting taxpayers and their representatives because both the IRS and the TIGTA are still unable to readily identify cases for review. While the IRS had agreed to the recommendation in the FY 1999 report, it now believes its corrective actions to conduct a survey and include the issue in the quality review process are no longer feasible. Instead, field group managers will be responsible for initiating steps to help ensure employee compliance with the law. We have included your comments agreeing with our conclusions as Appendix III to this report.

Copies of this report are also being sent to the IRS managers who are affected by the report's conclusions. Please contact me at (202) 622-6510 if you have questions or Maurice S. Moody, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

Objectives and Scope

The overall objective of this audit was to evaluate the IRS' compliance with the law concerning a taxpayer's right to consult with a representative.

The overall objective of this audit was to determine if the Internal Revenue Service (IRS) is in compliance with the law concerning a taxpayer's right to consult with a representative.¹ We also determined the status of the IRS' actions to develop a process to determine whether employees are complying with the law when a taxpayer requests to consult with a representative or when an employee bypasses a representative to deal directly with a taxpayer.

The Treasury Inspector General for Tax Administration (TIGTA) is required to annually evaluate² the IRS' compliance with 26 U.S.C. § 7521(b)(2) and (c). To accomplish the audit objectives, we met with IRS' Small Business/Self-Employed Division management and analysts and reviewed documents regarding the audit issues, including draft guidelines. We conducted the audit in the IRS National Headquarters between January and May 2001. This audit was performed in accordance with *Government Auditing Standards*.

Major contributors to this report are shown in Appendix I. Appendix II contains the Report Distribution List.

Background

IRS employees are required to stop an interview if the taxpayer requests to consult with a representative.

The Taxpayer Bill of Rights³ created a number of safeguards to protect taxpayers when they are being interviewed by an IRS employee as part of a tax audit or

¹ 26 U.S.C. § 7521(b)(2) and (c) (1986).

² 26 U.S.C. § 7803(d)(1)(A)(ii) (Supp. IV 1998).

³ Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, 102 Stat. 3731 (1988) renumbered Pub. L. No. 101-239, 103 Stat. 2423 (1989).

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

collection action. Specifically, IRS employees are required to:

- Stop a taxpayer interview (unless the interview is required by court order) whenever a taxpayer requests to consult with a representative (someone who is permitted to represent taxpayers before the IRS).
- Obtain their immediate supervisor's approval to contact the taxpayer instead of the representative if the representative is responsible for unreasonably delaying the completion of a tax audit or collection action.⁴

A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards direct contact provisions.

The provisions were created to protect the rights of taxpayers who are interviewed by an IRS employee as part of a tax audit or collection action. A taxpayer can file a civil suit against the IRS if an IRS employee intentionally disregards these provisions by denying a taxpayer the right to appropriate representation.

In Fiscal Years (FY) 1999⁵ and 2000,⁶ the TIGTA reported that it could not determine whether IRS employees complied with the required procedures because the IRS and the TIGTA were unable to readily identify cases for review. IRS management systems do not separately record or monitor cases where taxpayers have requested to consult with a representative or where employees need to bypass taxpayer representatives and contact taxpayers directly. Moreover, the IRS is not required to develop a separate system that records or monitors cases involving these two procedures.

⁴ 26 U.S.C. § 7521(b)(2) and (c).

⁵ *The Internal Revenue Service Needs to Enhance Guidance on and Monitoring of Compliance with Procedures for Directly Contacting Taxpayers and Their Representatives* (Reference Number 1999-10-076, dated September 1999).

⁶ *Letter Report: Improvements Have Been Implemented for Directly Contacting Taxpayers and Their Representatives* (Reference Number 2000-10-132, dated September 2000).

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

Results

The TIGTA could not determine whether IRS employees complied with direct contact procedures.

As in the prior two reviews, the TIGTA could not determine during this review whether IRS employees followed proper procedures to stop an interview if the taxpayer requested to consult with a representative. Neither the IRS nor the TIGTA could readily identify cases where the taxpayer requested a representative or the IRS contacted the taxpayer directly and bypassed the representative.

In the FY 1999 report, the TIGTA recommended that the IRS develop a process to determine whether employees comply with the law when a taxpayer requests to consult with a representative or the employee bypasses a representative. The IRS planned to implement a survey to capture information from taxpayers interviewed by IRS employees. It also planned to include the direct contact issue in its quality reviews.

The IRS decided not to begin a new taxpayer survey or to include direct contact in its quality reviews.

As of March 2001, the IRS had not initiated the survey or incorporated the direct contact issue into its quality reviews. Small Business/Self-Employed (SB/SE) Division management officials verbally advised us in March 2001 that they believe an additional taxpayer survey would impose undue taxpayer burden. They stated that the IRS already uses several surveys to solicit taxpayer opinions on customer service issues. In addition, they stated they believe that including the direct contact issue in its quality reviews is not feasible because employees would generally not have documented these activities in case histories.

The management officials also stated that, instead, they planned to have field group managers take steps to help ensure employee compliance with the laws concerning direct contacts with taxpayers. The IRS has drafted new guidelines instructing field group managers to take whatever steps are necessary (including case reviews, on-the-job visits, and taxpayer/representative inquiries) to help ensure that these requirements are met.

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

The IRS has not yet implemented action to address the TIGTA's FY 1999 report recommendation.

However, the IRS has not implemented this action or revised the planned corrective actions in response to the TIGTA's FY 1999 report recommendation.

Conclusion

The TIGTA could not determine whether IRS employees followed proper procedures to stop an interview if the taxpayer requested to consult with a representative. This condition continues to exist because, as noted in the first two TIGTA audits, there is no management information system to identify and monitor cases for review.

While the IRS had agreed to the recommendation in the FY 1999 report, it now believes its corrective actions to conduct a survey and include the issue in the quality review process are no longer feasible. Instead, the responsible IRS managers stated they believe the draft guidelines instructing field group managers to monitor the direct contact issue should help ensure employee compliance with the law. We do not object to this alternative approach. After the guidelines are implemented, the TIGTA will assess the impact of these efforts in its future reviews.

Management's Response: The Commissioner, SB/SE Division, agreed with the results and conclusions presented in this report. The full text of the comments is shown in Appendix III.

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

Appendix I

Major Contributors to This Report

Maurice S. Moody, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)

Mary V. Baker, Director

Augusta R. Cook, Audit Manager

Nelva Blassingame, Auditor

Tracy K. Harper, Auditor

Sylvia Sloan-Copeland, Auditor

**Letter Report: The Internal Revenue Service Has Not Implemented a Process to
Monitor Compliance With Direct Contact Provisions**

Appendix II

Report Distribution List

Commissioner N:C
Director, Compliance S:C
Director, Reporting Compliance S:C
Director, Legislative Affairs CL:LA
National Taxpayer Advocate TA
Director, Office of Program Evaluation and Risk Analysis N:ADC:R:O
Chief Counsel CC
Office of Management Controls N:CFO:F:M
Audit Liaison: Compliance Policy, Small Business/Self-Employed Division S

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

Appendix III

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUL 10 2001

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: *Joseph Kehoe*
Joseph Kehoe
Commissioner, Small Business/Self Employed Division

SUBJECT: Response to Letter Report: The Internal Revenue Service
Has Not Implemented a Process to Monitor Compliance With
Direct Contact Provisions (Audit No. 200110015)

Thank you for the opportunity to review and comment on the subject draft letter report. We have issued guidance and are revising the Internal Revenue Manual to include instructions on how to monitor the Direct Contact provisions to ensure we achieve employee compliance with the law.

I appreciate your acknowledgement that we verbally informed your auditors in March 2001, of our actions on the prior report. In response we will document the conversation about our follow-up actions and provide information to close the prior recommendations.

Though your draft letter report contained no recommendations, I will refer to your prior FY 1999 report (#19910076) recommendations to address the issues raised.

Recommendation 1: Complete efforts to clarify national guidance for IRS employees to ensure those taxpayers' requests to consult with their representatives are treated consistently.

IRS management agreed to provide additional national guidance for IRS employees. We have revised the Internal Revenue Manual (IRM) to reflect:

- Procedures for handling situations when a representative is authorized to represent the taxpayer on only one tax year, but the examination or collection interview covers more than one year. *Completed: IRM Handbook 4.2, Chapter 2, Text 7.4.1(5) and Text 6.1(4); and Handbook 5.1, Chapter 10, Text 4.*
- Instructions on whether employees should consider enforcement actions (such as seizure of property) an interview with the taxpayer. *Completed: IRM Handbook 5.1, Chapter 10, Text 4.*

Letter Report: The Internal Revenue Service Has Not Implemented a Process to Monitor Compliance With Direct Contact Provisions

Recommendation 2: Develop a process to determine whether employees are complying with the law when a taxpayer requests to consult with a representative or the employee bypasses a representative. In developing this process, the IRS should consider whether it would be feasible to use current IRS systems.

In our previous response, we said we planned to implement a survey to capture taxpayer feedback on this issue. After further analysis, we no longer agree that a survey is the correct approach. An additional survey would be a burden on the taxpayer and on IRS resources. The IRS makes many avenues available for taxpayers and representatives to voice their concerns on this issue such as:

- Contacting the Commissioner, other IRS management officials, the Taxpayer Advocate's Office
- Participating in the Commissioner's practitioner group meetings or other meetings held with the public.

Also, as noted in the response to the earlier report, our employees resolve most representative issues before the initial interview. Based on experience in the field, most taxpayers request that our enforcement personnel speak to their representative at the time they are notified of the initial appointment, and this request is appropriately resolved via power of attorney. In addition, in light of Section 1203 and other RRA 98 provisions, examiners and revenue officers have become more aware of taxpayers' rights.

Our previous response also said we would provide instructions to field managers and quality review staffs to specifically consider this issue. After further consideration, we believe using a quality review process to ensure employees respected taxpayer's rights would not be effective. We do not expect an examiner to document what did not occur in the course of the taxpayer contact. Hence, examiners and officers generally would not include these types of comments in their case files. As an alternative, we agree to have first line supervisors address this issue in group meetings, case reviews, on-the-job visits, and taxpayer/POA inquiries. We have issued a memorandum to all compliance managers on this direction, and will revise the IRM to include this information. We are circulating the IRM for clearance now.

If you have any questions on this response, please contact Martha Sullivan, Deputy Director, Compliance Policy, Small Business/Self-Employed at 202-622-5563.